

ISLAMIC LAW PERSPECTIVE OF THE CHILDREN'S ACT, 2003

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PRESENTED AT:

**A Seminar Organised by the Sister Directorate of
the International Institute of Islamic Thought
(Nigeria Office) on 6th June, 2010. At the
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Introduction

Child Right Act 2003 was based on some principal instruments of the United Nations, that is Convention on the Rights of the Child (CRC) which was adopted on 20th November, 1989 and came into force on 2nd September, 1990 and the African Charter on The Rights and Welfare of The Child which was adopted in July, 1990 and entered into force in November, 1999. Another instrument that forms part of the Act is chapter IV of the 1999 Nigerian Constitution.

However, since International Convention/Treaties are not binding laws upon member states of the U.N., any state that wants the Conventions/Treaties to be so, it need to domesticate it by enacting it into a law that will bind the state locally. In Nigeria S. 12 of the 1999 Constitution provides that for a treaty to have the force of law the majority of all the State Houses of Assembly in the Federation must ratify it. This is probably the reason why there is so much pressure by the International Communities, through their multi-literal organizations and agencies, on the states to adopt and pass the Conventions (for child's rights which has been enacted into National law in 2003 without complying with the provision of S. 12).

Child Right Act is not an innocent quest to improve the lot of our children. It is rather an attempt to detach us from the *Shari'ah* which is the only system capable of governing the life of Muslims. It is also an attempt to usurp the powers of our courts to adjudicate (in accordance with Islamic Law) on our family issues and transfer that power to the representatives and proxies of the International Communities. If this is allowed then our faith, heritage and legacy that have survived colonization more than any part of the world would be destroyed and our children will grow

up to be humanists, hedonists and rebels against Allah and His system just as the International Communities have become. May Allah forbid.

Structure and Content of the Act:

The Act consists of 24 parts and 278 sections in 680 pages printed and published by the Federal Government Press, Lagos, Nigeria). It provides that the best interest of the child is of paramount consideration (SS. 1-2); it provides for the rights and responsibilities of child which includes the prohibition of marrying a child below 18 years or betrothing such a child, it prohibits using a child for any criminal activity, abduction and unlawful removal and transfer of a child from lawful custody, forced, exploitative or hazardous child labour, employment of children as domestic helps, buying, selling or hiring of or dealing in children for the purpose of hawking, begging for alms, prostitution, unlawful sexual intercourse and other forms of sexual abuse and exploitation prejudicial to the welfare of children. It also prohibits recruitment of children into the armed forces and importation of harmful publication capable of corrupting or depraving child.

Part IV of the Act provides for additional protection of child's interests through civil welfare proceedings. It also makes a special provision for children in need of care and protection in parts 5 and 6. Part 7 deals with the use of scientific test in determining the paternity or even maternity of a child while parts 8 and 9 deals with the possession, custody and guardianship of children. Part 10 vests the court with power to make a child a ward of the court.

Adoption of children and establishment of adoption centres that provide services, for the adopted child have been provided for in part 12. Part 13 of the Act provides for a special court to be known as the Family Court that shall have unlimited jurisdiction to hear and determine any case (civil or criminal) in respect of any issue regarding a child.

Parts 14, 15, 16, 17, 18 and 19 provide for child minding and day care of young children, provision of government services for children in need, securing Community Homes, provision of accommodation by voluntary organization, registered Children's Homes and inspection of the Children's Homes by authorized bodies.

Part 20 provides for child (criminal) justice administration and processes.

The Act also provides for the Child's Rights Implementation Committees at National, State and Local Government levels.

These are the most important aspects of the Act

Special Observations:

Some provisions of the Act apparently contradict the injunctions, values, teaching's and provisions of the Shari'ah. This is not surprising because the origin of the Act is the Conventions and Treaties designed by the people who are not only ignorant of the *Shari'ah* but hate anything to do with Islam. The fact that some Muslims are involved in domesticating the Treaties has not made any difference because what bothers most of them is the material benefits they gain in the process. Following are some few specific examples of how the provisions of the Act apparently contradict Islamic injunctions and are contrary to the

interest of not only Muslim children but Muslims in general.

1. S. 7 of the Act provides that “Every child has a right to freedom of thought, conscience and religion.” The implication of this section is that a Muslim child has a right to adopt any religion (other than Islam) of his choice. This is contrary to the cogent and preponderate view of Muslim jurists according to which a Muslim child is considered a Muslim. That is why if, at the age of ten, he refuses to perform *salat*, the parents are enjoined to beat him. This is in accordance with the *hadith* in which the Prophet (S.A.W.) was reported to have said:

Order your children to pray when they become seven years old, and spank them for it when they become ten years old.¹

Moreover, Mu’adh ibn Jabal (R.A.) reported that the Prophet (S.A.W.) ordered him to do ten things; the ninth and tenth among them were:

Do not refrain from using pressure (on your children) with a view to training them. Inculcate in them the fear of Allah.²

Accordingly, a Muslim child has no right, like an adult Muslim, to adopt any religion other than Islam. In holding this view, the Muslim jurists rely on some authorities including the Qur’anic verse, 10:19 which provides.

Mankind, were but one community, (i.e. on one religion Islamic Monotheism), then they differed ...²

This verse indicates that to believe that Allah has partners, which characterizes all other religions except Islam, is an

incidental development. Originally, human nature believed in the oneness of Allah.

Another Qur'anic verse (i.e. 30:30) is more directly relevant to this issue. The verse provides:

So set thou thy face truly to the religion upright, the nature in which Allah has made mankind...⁴

And in a *hadith*, the Prophet (S.A.W.) was reported to have said:

No child is born except on the *fitrah* (of connectedness to Allah), animal gives birth to a perfect offspring ... then his parents judaize or christianize or magianize him.⁵

Since from the foregoing explanation a Muslim child is a Muslim, he has no right to follow any religion except Islam. So if upon reaching the age of maturity he converts to another religion then he commits an apostasy and the punishment of apostasy, i.e. death sentence, shall be imposed on him unless he repents. This is in accordance with a *hadith* in which the Prophet was reported to have said, "Whoever changes his religion kill him."⁶ And Sheikh Tantawi al-Jawhari quoting the Qur'anic verse 2:217, says:

...Therefore, this *ayah* is a strong warning from Allah (S.W.T.) that, the appropriate punishment for those who desert his belief from Islam is death.⁷

It is, therefore, wrong to misquote the Qur'anic verse 2:256, "There is no compulsion in religion," to justify conversion from Islam to any other religion by a Muslim, even if he is a child.

2. S. 10 (1) provides that "A child shall not be subjected to any form of discrimination merely by reason of his

belonging to a particular community or ethnic group or by reason of his place of origin, sex, religion or political opinion.”

If “discrimination” means mere difference in treatment, it then contradicts the Qur’anic principle of agnatisation in inheritance where female child or full sister or consanguine sister gets 1/2 share of that of the male child or full or consanguine brother.

3. S. 10 (2) further provides that “No child shall be subjected to any disability or deprivation thereby by reason of the circumstances of this birth.” The implication of this section is that an illegitimate child is entitled to inherit his biological ‘father’ who has no any marital ties with the child’s mother at the time of conceiving the child. This is contrary to the provision of the *Shari’ah*.

4. Connected with this provision is S. 17 of the Act, because according to sub-sections (2) and (3) of the section an unborn child can only inherit its mother or father if they die “intestate,” which means that if they bequeath their property the unborn child is not entitled to inherit them. This is obviously contrary to the *Shari’ah* rules because under the *Shari’ah*, child’s right to inheritance is inalienable by virtue of the provision of the Qur’anic verse, 4:11 and the right extends to an unborn child provided it was conceived before the death of the father and delivered alive after his death.

5. S.13(4) provides that “Every parent, guardian or person having the care of and custody of a child under the age of two years, shall ensure that the child is provided with full immunization.” The implication of this sub-section is that immunization is compulsory especially because sub-section (5) provides for the punishment of failure in the ‘imposed duty’. And beside the punishment, “the court may make an

order compelling the parent or guardian of a child to get the child immunized.”

This compulsion is oppressive especially because there are enough scientific evidences, to show that immunization or vaccination is dangerous. One of such evidences is the testimony of the American Center for Disease Control and Prevention in its newsletter ‘Polio News’ of 1/01/2000 in which it declared that:

“The use of OPV (Oral Polio Vaccine) is no longer worth the risk. This is because OPV causes polio and it is no longer recommended in the USA today . . . and it is still used in other parts of the world.”⁸

What was reported in *Leadership* that international health officials have said the polio outbreak in Nigeria which has left at least 69 children paralyzed was caused by the vaccine designed to stop it (i.e. OPV) is enough proof of that.⁹ This is not surprising because according to a Virologist at the U.S Centre for Disease Control and Prevention (CDC) “This vaccine is the most effective tool we have against the virus, but its like fighting fire with fire.”¹⁰

In yet another report on this by Associated Press carried in Daily Trust, World Health Organization issued a warning in July, 2009 that so far 124 Nigerian children have been paralyzed in 2009 about twice those afflicted in 2008. It was discovered by WHO that the outbreak was caused by the polio vaccine itself because it mutates. Thus Dr. Bruce Aylward, head of the Polio Department at WHO admitted that it’s very disturbing.¹¹

Another disturbing information about polio vaccine is that according to the figures of Center for Disease Control and

Prevention (CDC) “every case of polio in the U.S since 1979 was caused by the oral polio vaccine.”¹²

Moreover, there are fears that WHO involves its researchers in developing anti-fertility vaccines using tetanus toxoid as carrier. Prof. Haruna Kaita, cited about five International Medical Journals that have testified to this.

These fears are justified when one comes to know about the American Government’s National Security Study Memorandum (NSSM) 200 prepared under the U.S. National Security Council (signed by Kissenger) and Jimmy Carters’ the Global 2000 policy signed by Edmond Musky, Secretary of State (at that time), in 1980, that aimed to control the population of the third world. The combination of these two seems to be the official policy of the U.S. that suggest the trimming of the third world’s population by eliminating 2-3 billion human beings by the year 2000. This suggests how unethical or even immoral efforts are being made in forcing various people to take vaccination in the Third World, especially Nigeria.

Locally, there are at least three independent reports or research conducted both in and out of Nigeria, that have confirmed contaminating polio vaccine with anti-fertility agents, such as estradiol, progesterone and B-Human chorionic gonadotropin (B-HCG). These reports include:-

a. Report on Laboratory Analysis of Oral Polio Vaccine submitted to the Honourable Minister of Health, Federal Ministry of Health, Federal Secretariat, Abuja, in November, 2003. The test was conducted in 5 Laboratories in Lagos and Abuja.

b. Report on Laboratory Analysis of Oral Polio Vaccine (OPV) samples submitted in January, 2004 to the President, Jama’atu Nasril Islam. The test was conducted in England and India by internationally renown professional in Pharmaceutical Sciences Prof. Haruna Kaita

and his teacher Prof. Abdullahi Mustafa which was not accepted by the Federal Government (for obvious reasons) but instead hurriedly organized the so-called verification exercise to South Africa, Indonesia and India to retest the vaccine. And in doing so, no scientist opposed to the OPV (including those who had conducted the original test) was carried along. Only traditional rulers (who always dance to the tune of the government), led by the Sultan and technically incompetent people were selected to represent the Jama'atu Nasril Islam. This has made the Muslim to lose confidence not only in the government but in the traditional rulers; because this case has shown that they are not interested to protect their people.

c. Report on the screening of Oral Polio Vaccine (OPVs) for Human Immuno Deficiency Virus (HIV), Human Chronic Gonadotrophin (HCG) and Contraceptive Steroidan Hormones by the staff of NAFDACT in South Africa and India (21st November to 2nd December, 2003). The test found all the 4 types of the anti-fertility contaminants in the samples.

It is pertinent to mention that WHO is in the forefront on this issue of not only Polio but all other immunization which has strengthened our justified suspetion that there is some evil in this immunization. This is especially because WHO has played more devilish role in executing the diabolic plan of the US and allied countries to depopulate the third world. For instance explained in an article titled **"Who Murdered Africa"** that it was WHO that made a call, in published articles, on scientists to create HIV virus, especially in its bulletin Vol. 47, pp. 251, 1972.¹³ And after creating the virus it was put in small vaccine and sent the same (in the name of assistance) to Zaire, Zambia, Tanzania, Uganda, Malawi, Rwanda, Burundi, Brazil and Haiti, where more than 97,314,000

people were injected with the contaminated vaccine as further reported by *The London Times*.¹⁵

All these show that enacting any law that includes similar section of S.13 of CRA is not only operative but is devilish.

6. SS.21, 22 and 23 provides for the prohibition of what they call “child marriage”, that is marriage or even betrothal with a person below 18 years, and the punishment thereof. This does not exclude Muslim children. The implication of this is if such marriage contracted (even where it satisfy the conditions of validity under Islamic law) the marriage held null and void and of no effect whatsoever. In addition, contracting such marriage or even its promotion or even betrothing the called child in contravention of the law imposes punishment of a fine of N500,000.00 or imprisonment for a term of 5 years or both such fine and imprisonment on (a) the person who marries the child; (b) to whom the child is betrothed; (c) who promotes the marriage; or (d) who betroths the child.

This limits marriageable age and put it at 18 years without considering the divergent culture of the people and their way of life. Thus for example in England and Wales the minimum legal age of getting married is 16 years old, even though the written consent of the parents or guardian is required for persons who have reached 18 years old and have not been previously married.

The position under the *Shari'ah* is totally contrary to the provision of the Act, because in all the sources of the *Shari'ah* marriageable age has been limited.

7. S.31 is related the above mentioned sections (21, 22 and 23) in that it provides that no person shall have sexual intercourse with a child (even if she is his wife) and any

person who contravenes this law commits an offence of rape and is liable, on conviction, to imprisonment for life. These provisions are degrading and humiliating to the heritage and even the rules of the *Shari'ah*, because even in the West (as mentioned above) the marriageable age is below the 18 year. That's why Muslims showed their anger, recently to what happened in the case of Senator Ahmad Sani Yariman Bakura (the former Governor of Zamfara State) because he married a child (according to them). The Non-Governmental Organization (NGO) especially WRAPA condemned the marriage on the basis that it is contrary to the Child Right Act, 2003, and even made an empty threat to take him to court to justify their payment by their sponsors. In doing so, though many of them claim to be Muslims, they don't mind to remember that Islam has its own provisions for its adherence. This is not surprising because these bodies erroneously consider International Conventions and Treaties and Programs of Action passed in Conferences organized by the U.N. are the ultimate standards for all people including Muslims who have their peculiar way of life (the *Shari'ah*) capable of solving not only their problems but the problems of the whole humanity because the originator of the *Shari'ah* is the creator of the humanity who knows its secrets and thus the solution to its problem more than anybody. Allah (S.W.T.) Himself tells such people in the Qur'an:

Do they then ask the judgment of (the Days of) Ignorance? And who is better in judgment than Allah for a people who have firm faith”.¹⁶

In short, Islam allows the so-called child marriage and betrothal of a girl at whatever age. Thus nobody has the

right to venture to prohibit it whoever he is whatever be his position, because doing this is venturing in prohibiting things which nobody, under the *Shari'ah* has the prerogative of doing, except Allah, the Creator. He even warns against such transgression in 16:116.

Hence do not utter falsehood by letting your tongues determine (at your own discretion), this is lawful and that is forbidden' thus attributing your own lying inventions to God: for behold, they who attribute their own lying inventions to God will never attain to a happy life.¹⁷

8. Section 50 of the Act enables a Development Officer who could be a member of NGO (a proxy of the U.S. Government) to bring a child before a court if, in the opinion of that officer, the child is an orphan or is deserted or has been neglected or ill-treated. The implication of this is that some children who are not qualified as school goers in the sight of the Western thinking will be molested and harassed.¹⁸

9. S. 63 (1) provides that in any civil proceeding, the paternity of a child under the Act, can be determined by use of scientific test. This section purports to replace the provisions of the *Shari'ah* concerning the determination of paternity of a child. Under the *Shari'ah*, paternity even if there is positive scientific result that the *zani* (fornicator or adulterer) is responsible for the conception of the child. This is because the Prophet (S.A.W.) categorically says, “*al-waladu lil-firash*” (child is for the wedlock) meaning legitimacy of a child stems from matrimony.

Furthermore, scientific evidence as a proof of paternity even in developed countries is not settled. Thus, in Britain,

the method is not accepted as conclusive evidence of paternity.¹⁹

10. SS. 83 – 92 which provide for guardianship of a child. The provisions allow for unqualified persons such as non-governmental organizations, to be appointed as guardian ad litem to be appointed as guardians, putting aside a person who has blood relation with the child while 8:75 provides that:

. . . but kindred by blood have prior rights against each other in the Book of Allah...20

11. SS. 100 – 123, which provide for fostering child is also detrimental especially because S. 110 provides that, upon a fostering order, all rights, duties and liabilities arising under Customary law (of course including Islamic Law) applicable to the parents of the child or any other persons in relation to the custody, maintenance and education of the child, and all rights to appoint a guardian and to consent or give notice of consent or marriage, shall be suspended.” One of the implications of this provision is that a child can be taken away from his parents by force of law, which may be detrimental to him.

11. Part 12 (SS. 125 – 148) clearly permits adoption (Tabanni). And by virtue of this provision the adopted child is legally considered as a legitimate child of the adopter. This is contrary to categorical provision of the Shari’ah in the Qur’anic verse 33:4-5 Adopted children, according to this provision, are not the real offspring of the adopters. Thus they must be ascribed to their true fathers. Another relevant Qur’anic provision is 33:40 which declares that Muhammad is not the father of anybody; he is rather the Apostle of Allah.

12. Part 13 (SS.149-162) provides for the Family Court that is vested with jurisdiction to determine cases relating to children, thereby ousting the jurisdiction of Shari'ah court in such matters. The aim of this is removing all Muslim children from being subjects to Shari'ah Courts. That is why some states like Jigawa State (which adopted the Child Right Act though repealed it later and Zamfara state (in its Bill on the Child Rights in an attempt to adopt the Child Rights Act, 2003) tried to extend the jurisdiction of the Act to Shari'ah Courts, which it seems can never work because this is not practicable. This is, for instance if a case involving one of the child's rights, such as custody, is brought before the *Shari'ah* Court, under that new arrangement, with what law the Shari'ah court shall decide the case where the child is a Muslim; With the Child Right Act or Islamic law? This question shows the irrelevance of the Child Right Act unless Islamic law will be thrown away in the case of a Muslim child.

All these examples show how the child's Rights Act contradicts the Shari'ah and how it purports to violate Muslims' constitutional right to practice their Islam according to its tenets and its laws.

CHILD'S RIGHTS LAW 2003 IS UNCONSTITUTIONAL

As it has been indicated earlier, the main source of the Act are some International Treaties (or Conventions) and as it has been provided in the 1999 Nigerian Constitution (S.12(1) "No treaty between the Federation and any other country shall have any force of law except to the extent to which any such treaty has been enacted into law by the National Assembly". In so doing, sub-section (3) of the Act provides that for any bill to be passed into law for the purpose of domesticating the treaty it must get the ratification of "a majority of all Houses of Assembly in the

Federation". It is undisputable fact that there has never been any attempt to get this ratification by the National Assembly. Commenting on this, the Attorney General of Kano State, Barrister Aliyu Umar said:

Until, this law was signed by President Obasanjo, there has never been any debate or consultation before the Act was passed.²¹

On this ground alone, the Act cannot have the force of Law any where in Nigeria, even in Abuja.

Secondly, according to the Second Schedule, Part I (on Exclusive Legislative List), No. 61 only the National Assembly has the power to enact a law concerning the formation, annulment and dissolution of marriages . . . including matrimonial causes relating thereto. Thus for the Child Rights Act, 2003 which is full of marital issues and matrimonial causes to be enacted by the State Houses of Assembly is unconstitutional and, therefore, such laws enacted by them are null and void for not complying with the constitutional provision.

On this, the Attorney General of Kano State has this to say:

The case of marriage, item 61 (Schedule II, Part 1) of the Constitution, which is on the Exclusive Legislative Lists, provides that the National Assembly can make laws on marriages, which are contracted under the Marriage Act. It specifically prohibits the National Assembly from enacting laws which are to be consummated under Islamic or Customary laws. So to the extent that, in my opinion, the law (i.e. the Child's Rights Act, 2003) provides that no person can marry a

female child who is under 18 years, runs contrary to the provision of the Constitution, because then they are enacting and providing for a marriage instrument which is under Islamic law. That item 61 provides as follows: The formation, annulment and dissolution of marriages, other than marriages under Islamic law and Customary law, including matrimonial causes relating thereto. But if you see the Child's Rights Act is actually talking about the marriages, Matrimonial causes, and by item 61, the National Assembly, like I said, is prohibited by the Constitution from making this enactment^{21(b)}.

In his view, the Attorney General, enacting laws concerning marriage and what appertains to it, by the National Assembly, just because there is pressure on it by the United Nation, is disrespect to the Constitution on this he says:

It is high time for us to start respecting our Constitution, because the United Nations said you should do that then we have to do it in a right way and we have to think wisely before implementing any law that was brought by United Nations or any other international body. If the National Assembly members have been purported to enact this law for marriages under Matrimonial causes, Act, nobody will say anything and anybody who contracted marriage under the Matrimonial causes Act can have this law

enforced against him, but when you now go ahead to talk about marriages, contracted under Islamic and Customary Laws then the National Assembly has no power²².

It can also be argued conversely that since the National Assembly enacted the Child's Rights Act which consists of largely marital issues and Matrimonial Causes it should be implied that the Act is not meant to apply to Muslims since by virtue of the 2nd Schedule, part 1, No. 61, the National Assembly has no say in the Islamic law marriage and what appertains thereto.

However, there is an argument that the forgoing argument is not valid because the National Assembly can enact laws on marriage even if it is Islamic law marriage, provided the source of the law is International Treaty. This power, according to the argument, is derived from S.12 (2) of the Constitution which provides that:

The National Assembly may make laws for the Federation or any part thereof with respect to matters not included in the Exclusive Legislative List for the purpose of implementing a treaty.

But this argument is evidently invalid because matters of Islamic law marriage, Islamic matrimonial cause, and what appertains to that, have been included in the Exclusive Legislative list under item No. 61 as an exception to the power of National Assembly to enact laws pertaining such marriage and matrimonial causes. Thus, according to this interpretation, the National Assembly has no power to enact law that concerns marriage except marriage under the Matrimonial Causes Act.

Another aspect of the Act which runs contrary to the constitution, according to the Attorney General, is the establishment of a court at State level (i.e. Family Court). On this he says:

Of course, the courts in Nigeria have been established by the Constitution . . . An Act of the National Assembly can create an inferior court to those mentioned in the Constitution for the whole Nigeria and for the purpose of Federal Legislation and a State House of Assembly can also establish such inferior court for the state. but what this Act purported to do is to create courts of the same jurisdiction with High Court to be called Family Court and also in the Magistrate for the purposes of trying offenders and meeting the harsh punishment provided in the Act²³.

He argues that the only situation upon which the National Assembly can create or make laws for the state or add other jurisdictions to the states' High Court is under the Fundamental Human Rights. He then concludes thus:

But in my opinion, the National Assembly has no power to create courts for the state except those courts that concern the legislations of the Federal Government²⁴.

All that has been explained evidently shows that all those who waste their time to see that Child Rights Act is implemented, merely chase shadows because the Act is constitutionally not a valid law. This is also a challenge to those who are preparing to take Senator Yarima to court

charging him, under the invalid law, with what they call child-marriage. The Lawyers among them, definitely knows that they are making fruitless efforts but they continue because to some extent the efforts are “fruitful”, for they will at least justify the payment of the job done for the International Communities and the United Nations and the foreign NGOs.

It should be known that there is no any law according to which various states of the Federation must adopt this unconstitutional law. On this, the Attorney General of Kano says:

What I want people to understand is that it is not true that this Act says states can adopt to suit their circumstances. There are no such provisions and I have not seen such in the Act²⁵.

The fact that Child Rights Act, 2003 is fundamentally contrary to Grundnum (the Constitution) of the country indicates why none of the principal people in enacting the Act was ready to take the responsibility for this “Shameful exercise done in a haste and mystery”²⁶ as explained by Ibrahim Sulaiman. He then asked some rhetorical questions that really reveal the secrets of the oppressive act of the so-called law-makers in enacting the Child Rights Act, 2003. He says:

How could sensible people behave so irrationally and so contemptuous of their people? Are they, as individuals, not having family, or sons and daughters? Did Muslims among them know nothing about the Qur'an and the Sunnah? Did they, have no respect for their society? Did they mean well for their

society, or were they blinded by monetary inducements from NGOs and other immoral vested interests, or were they so foolish to trade good for evil? Did they mean well for this nation?²⁶

ISLAMIC LAW PERSPECTIVE

It is essential first and foremost, before making any specific discussion on the Child Rights Act, 2003, to clarify the serious issue of judging, ruling according to, or following laws other than the laws of the Shari'ah by a Muslim. The position of promulgating man-made laws, accepting these laws and thinking that they are as good as or better than the Shari'ah, or that it is permissible to refer to them for judgment voluntarily, is not clear to most of the Muslims, even the learned among them. This is because once they understand that doing this is deviation from Islam they will not accept anything from their government and rulers to rule their lives, except the Shari'ah. They will also realize that any other system or law is nothing more or less than deviation and with this deviation; the Muslims cannot even progress in this life.

The Muslims, according to Sheikh Abdulqadir Audah remained at the zenith of their glory so long as they adhered to Shari'ah. But when they ceased to abide by its injunctions, their progress came to a stand still, and retrogressed into the same darkness of ignorance in which they have been wandering before embracing Islam with the result that they grew increasingly weaker and finally fell prey to foreign domination, without any power to resist any act committed against them. They try to emulate the West thinking that its progress lies in its law and way of life ²⁷.

Audah then draws the attention of the Muslim to the fact that it is inevitable for their advancement and perfection to implement the *Shari'ah* ²⁸.

What Abdulqadir Audah said has been confirmed by an American non-Muslim scholar, Prof. Hocking of the Harvard University in his book "The Spirit of the Word Politics", where he testifies that:

Islamic lands will not progress by merely imitating, Western arrangements and values. Can Islam produce fresh thinking, independent laws and relevant statutes to fit the new needs raised by modern society? Yes! And more! Islam offers humanity greater possibilities for advancement than others can. It's lack is not ability – but the will to use it. In reality *Shari'ah* contains all the ingredients needed ²⁹.

This exposition has been made for those who think there are any good things in the Child Rights Act, 2003 for the Muslim Child which *Shari'ah* is incapable of providing.

Thus Muslims must believe in the ultimate supremacy of the *Shari'ah* and submit their lives to it and believe in the sovereignty of Allah and that He is the only actual law-giver. To ask them to do otherwise or to make their religious conviction subservient to man-made standard or secular humanism is really a deviation which is unacceptable.

Moreover, it is the Constitutional rights of the Muslims to conduct their affairs in accordance with the dictates of the *Shari'ah*, as explained by a renown Nigerian Muslim

scholar, Prof. Auwal Yadudu, who is a Law Professor of international repute, where he says:

Muslims have legitimate aspirations to live a life under the dictates of the *Shari'ah*. They are entitled to this because the Constitution guarantees them the right to do so. In addition, by the Federal arrangement which the country has come to consider as an agreed ingredient of our polity, we have only chosen to organize the various peoples making up the country within a framework of a single state without interfering with particular ways of each . . . The surest way of chaos and generation of ill-feeling is for a group (or groups) to try to attempt to hold a whole religious community to ransom over a non-negotiable matter of conscience ³⁰.

In fact, implementing the *Shari'ah* rules by the Muslims in all aspects of their lives has been made to be a prerequisite of their *iman* (faith) without which the *iman* is considered, according the *Qur'anic* verse 4:60 as a false claim. The verse provides thus:

Have you not seen those who claim that they believe in what has been sent down to you, and that which was sent down before you? They wish to go for judgment to *tagut* (false gods), while they have been ordered to reject them. But *Shaitan* (Satan) wishes to lead them astray.

This verse shows that referring to any system for deciding or solving any problem in our life situation under any pretext and guise and unfounded excuses is hypocrisy.

The essential characteristic of any true Islamic set-up, regardless of the actual form or system it adopts, according to Sayyid Qutb, is complete acceptance of the Divine way of life, referring all matters to God's law, obeying God's Messenger in all that he has conveyed to us of God's message and acknowledging that God-head belongs completely to Allah alone. This shows that all sovereignty with its essential corollary of legislative authority belongs to Allah. Then he concludes thus:

An important result of this is not to refer to false gods in any matter, serious and trivial. Reference must always be to God and His Messenger in any situation that may come up as a result of life development³¹.

Moreover, 4:65 decisively and categorically states that no one can be a true believer until he accepts the Prophet's rulings over all his life affairs and submits to them willing, without any hesitation. The verse reads:

But no, by your Lord! They do not really believe unless they make you a judge in all disputes between them, and then find in their hearts no bar on an acceptance of your decisions and give themselves up in total submission.³²

This verse explains a fundamental Islamic principle in the form of a confirmed oath by the Creator, Allah (SWT)

without any qualification. However, this, as Sayyid Qutb explains, cannot be construed as to mean that the Prophet (SAW), in person, should judge in all duties between believers at all times. Otherwise it means that a judgment based on his faith and implementation of Allah's law and the Prophet's *Sunnah* would have no place in the life of the community after the Prophet (S.A.W.) had passed away.³³

Another verse that clarifies this fundamental principle is 33:36 which provides:

It is not for a believer, man or woman, when Allah and His Messenger have decreed a matter that they should have any option in their decision. And whoever disobeys Allah and His Messenger, he has indeed strayed into plain error.³⁴

From all these verses quoted above, one fact is clear (which is not clear to many Muslims, especially the lawyers who erroneously look at the *Shari'ah* through the spectacles with which they look at the man-made secular law). The fact is that the *Shari'ah* system, unlike secular system, is inter-woven and inter-connected with *aqidah*. (*iman* or faith). This inter-connection between *Shari'ah* and *aqidah* is so deep and fundamental to the extent that one cannot be a real Muslim without submitting and surrendering all his affairs to *Shari'ah* rules. Rather, submitting to any system besides that of Allah (the *Shari'ah*) voluntarily is regarded in 9.31 as associating partners with Allah. Commenting on this serious issue, in the process of interpreting the verse, and after quoting the *hadith* of Adiy

ibn Hatim Sayyid Qutb interpreted worship to mean following the law.

He explains that the Jews and Christians have been accused of regarding their rabbis and monks as Lords even though they did not make them Lord in the sense that they treated them as gods or that they offered their worship rituals to them. Yet Allah describes them in this verse as associating them with Him. This is only because they followed the laws they devised for them in disregard to Allah's laws. This alone, according to him, is sufficient to make anyone who does it a person that associates partners with Allah which take him out of the faith (i.e. Islam) all together and puts him in the category of unbelievers. He then concludes thus:

The religion of truth which is the only one that is acceptable to God from any human being is 'self surrender'. Such self surrender is manifested by implementing God's law, after having believed in His oneness and offering worship to Him alone. If people are to implement a law other than that of God, then what God has said about Jews and Christians will apply to them as well. In other words, they would be idolaters and unbelievers, no matter how emphatically they assert that they believe in God. Those description will apply to them once they willingly implement a law devised by human beings in total disregard to God's law, unless they protest that they only follow such laws against their wishes and they have no power to repel that compulsion³⁸.

It is clear now, after making this clarification, that it is not possible to the Muslims, in their sense to accept or even to agree with the Child Rights Act, 2003 even with whatever modification or review. There is no modification or review that is capable of transforming it to *Shari'ah* which we have by now understood is a must for a Muslim to be so. So trying to review it with a view to making it acceptable to Muslims is not only fruitless but also dangerous. This is because the implication of accepting or even agreeing with it is tantamount to accepting an option of Allah's law the consequence of which has been categorically explained by 33:36 earlier quoted.

Moreover, accepting the Act is, by implication, admitting that the *Shari'ah* is imperfect and incapable of protecting child's rights and no Muslim, in his sense will ever accept this. This is because the *Shari'ah* being a perfect system, has made all provisions not only for the protection of child's rights but also family and societal matters have been taken care of. On the perfection of the *Shari'ah*, Oudah says:

... the Islamic law was complete, comprehensive and perfect in all respect right at the time when Allah revealed it to His Apostle Muhammad (S.A.W.). There was not a flaw in it³⁶.

He then quotes, 5:3 which reads:

...This day I have perfected your religion for you, completed my favour upon you, and have chosen for you Islam as your religion...36.

Conclusion

We have briefly seen how the Child Rights Act has largely originated from two foreign documents in form of International Treaties or Conventions, but which were hurriedly and carelessly domesticated though unconstitutionally without due regard to the Muslims' right and feelings out of sheer arrogance and serious lack of concern.

We have also gone briefly through the structure and contents of the Act which apparently contains many 'good things' and also many evils or detrimental things to the (Muslims way of life).

I have also tried to clarify one very fundamental issue, i.e. the relationship between the Act and any other man-made system and the Muslim faith and that has become the most important distinction between the *Shari'ah* which is Allah's system and the man-made secular and humanist system, which of course affect the *aqidah* of Muslims negatively.

The Act definitely presumes that our cultures, attitudes legal system and even our faith must be the same, i.e. they must be Western while this is against the natural design by Allah, the Creator as he explains in His Noble Book, 11:118-119:

And had thy sustainer so willed, He could surely have made all mankind one single community but (He wills it otherwise and so) they continue to hold divergent views (even about the truth revealed to them by God all

of them) save those upon whom thy sustainer has bestowed His grace and for that did he created them...³⁷

Enacting such law as Child Rights Act, 2003 in a society where the majority are Muslims, under and any pretext, is selling their interests at a paltry sum, which will consequently affect the very foundation of their society, the family. While, in many cases the rights of not only the children or women but even that of man are violated and denied in our society, the solution is not foreign Conventions and Protocols which are not accepted as solution to some people who are responsible for designing them. Thus for instance one of the internal conventions, awaiting domestication in Nigeria, the Convention for the Elimination of all Forms of Discrimination Against Women (CEDAW) was refused to be ratified by the US, commenting against the protocol, one of the American Law-makers Senator Jesse Helms who later chaired the Senate Foreign Relations Committee was reported to have said:

CEDAW is terrible treaty negotiated by radical feminists with the intent of enshrining their radical anti-family agenda into international³⁸.

So the only solution to these problems is returning to Islam by understanding its ideals and laws and fearing Allah in putting them into practice in our daily dealings and not borrowing some ideals from people who have deviated and rebelled against Allah.

Shari'ah being the system designed by the creator of not only man but the whole universe has solution to every problem.

Finally it is necessary for Muslims to reject totally not only Child Right Act, 2003 but any law and value capable of destroying the fabric of the society along with any similar instrument. No any institution, organization or even government should be allowed to throw any rubbish on the Muslims or show any disrespect or contempt for the *Shari'ah* and the Muslim society. Muslims should not allow any current in the name of trying to suit the so-called international arena, to succeed, under which, the International Conventions that are alien and detrimental to Islam are imposed on the Muslims with the aim to force them to self-destruction.

Alhamdu Lillahi
30th/06/10

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